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10/691,352

10/22/2003

Keith K. Cargin JR.

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09/07/2006

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EXAMINER

CHANG, YEAN HSI

ART UNIT

PAPER NUMBER

2835

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/691,352 | Applicant(s) CARGIN ET AL. | |
| | Examiner Yean-Hsi Chang | Art Unit 2835 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-94 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-94 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c)

because:

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 44-45, 49-51, 54-55, and 59-63 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2-3, 4, and 5-10 of U.S. Patent No. 6,895,419, respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because same subject matters are claimed with some different terminologies, such as: a data communication system vs. a data collection system, a portable computerized data communication device vs. a hand-held computerized data collection terminal, a computerized system vs. a computer processor means, a portable power supply vs. a battery pack, a cover vs. an end cap, and a device housing portion vs. a terminal housing end portion.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 44-47, 49-57, 59-61, 64-65, 67-70, 72-75, 77-80, 82-85 and 87-93 are rejected under 35 U.S.C. 102(b) as being anticipated by Kumar et al. (US 4,621,189).

Kumar teaches a hand-held computerized data communication device (fig. 1) comprising: a user interface (an alphanumeric keypad 16), a computerized system (microprocessor and circuitry 90) controlling operation of the device, a portable power supply (battery 104) providing operating power to said computerized system, a device housing (12) having a normal closed condition (fig. 1) defining an interior space within the device housing (fig. 3), and having an interior electrical connector (28) within said interior space, a cover (30), a memory (98), and said device having an open condition (fig. 2) providing access to said interior space while said device housing is in said open condition to enable connection with said interior electrical connector of a peripheral device (a wireless communication module 34) equipping the device to perform a new function (optical scanning).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 48, 58, 71, 76, 81, 86 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar et al. in view of Morris (US 5,020,090).

Kumar discloses the claimed invention except the peripheral device comprising a radio frequency communication module.

Morris teaches portable computerized data communication device (22, fig. 1) comprising a peripheral device (38) comprising a radio frequency communication module (38).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Kumar with the RF communication module taught by Morris so that data may be transmitted wirelessly through a RF link.

8. Claims 62-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar et al. in view of Knowles (US 4,983,818).

Kumar discloses the claimed invention except said peripheral device electrical connector providing coupling both said computerized system and said battery to a particular device via a cable.

Knowles teaches a portable computerized data communication device (200, fig. 4) comprising: a peripheral device electrical connector (304) providing coupling both said computerized system and a battery (not shown see col. Col. 4, lines 52-55) to a particular device (20) via a cable (308).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the device of Kumar with the cable connection taught by Knowles for more flexibility of using the particular device since both Kumar and Knowles teach a data terminal with a bar code reader.

9. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar et al. in view of Tatsuno (US 4,870,604).

Kumar discloses the claimed invention except said memory comprising a removable memory card.

Tatsuno teaches a removable memory card (K) used in a data processing device (fig. 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the memory of Kumar to comprise a removable memory card for being easier to be updated and being conveniently carried with.

Response to Arguments

10. Applicant's arguments filed 8/24/06 have been fully considered but they are not persuasive.

Applicants argue, "In Kumar, it is the closed condition (i.e., the opposite of the open condition) that enables the connection with the alleged interior electrical connector (i.e., recessed pin sockets 28). Thus, Kumar does not describe at least these elements as set forth in claim 44."

Claim 44 of the application recites, in part, 'said device having an open condition providing access to said interior space while said device housing is in said open condition to enable connection with said interior electrical connector of a peripheral device equipping the device to perform a new function'. "To enable" means, as defined

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by Merriam Webster's Collegiate Dictionary, 10th Edition, "to make possible". Therefore, fig. 2 of Kumar shows the device housing 12 is in an open condition to enable connection to enable connection with said interior electrical connector 28 to a peripheral device as claimed in claim 44.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yean-Hsi Chang whose telephone number is (571) 272-

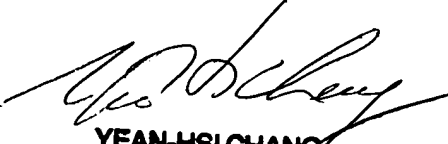
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2038. The examiner can normally be reached on 07:30 - 16:00, Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the Art Unit phone number is (571) 272-2800, ext. 35. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-8558.

Yean-Hsi Chang
Primary Examiner
Art Unit: 2835
September 5, 2006



YEAN-HSI CHANG
PRIMARY EXAMINER